

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON APPROPRIATIONS**

**Call to Order:** By **CHAIRMAN STEVE VICK**, on March 9, 2001 at 3:00 P.M., in Room 102 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Steve Vick, Chairman (R)  
Rep. Dave Lewis, Vice Chairman (R)  
Rep. Matt McCann, Vice Chairman (D)  
Rep. John Brueggeman (R)  
Rep. Rosalie (Rosie) Buzzas (D)  
Rep. Tim Callahan (D)  
Rep. Edith Clark (R)  
Rep. Bob Davies (R)  
Rep. Stanley Fisher (R)  
Rep. Dick Haines (R)  
Rep. Joey Jayne (D)  
Rep. Dave Kasten (R)  
Rep. Christine Kaufmann (D)  
Rep. Monica Lindeen (D)  
Rep. Jeff Pattison (R)  
Rep. Art Peterson (R)  
Rep. Joe Tropila (D)  
Rep. John Witt (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Linda Keim, Committee Secretary  
Taryn Purdy, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 572, 3/6/2001; HB 177,  
3/6/2001; HB 598, 3/6/2001  
Executive Action: HB 614, HB 177, HB 598

HEARING ON HB 572

Sponsor: REPRESENTATIVE KEITH BALES, HD 1, OTTER

Proponents: Gail Abercrombie, MT Petroleum Association  
Holly Franz, Redstone Properties  
John Bloomquist, MT Stockgrowers Association  
John Allen, Western Environmental Trade Assn.  
William Duffield, MT Assn Oil, Gas & Coal Counties  
Patrick Montalban, Northern MT Oil & Gas Assn.  
Bob Gilbert, Rosebud County

Opponents: None

Informational Witnesses: None

Opening Statement by Sponsor:

REPRESENTATIVE KEITH BALES, HD 1, OTTER said HB 572 is related to the development of coal bed methane. It will set up a fund which will serve as an insurance policy against unintended consequences that may arise from coal bed methane development. The fund will compensate landowners and water right holders for damage caused by the development of coal bed methane in cases where a company cannot be found liable, the company has gone bankrupt, or there is some problem that cannot be handled. It would be for water depletion if there is an aquifer, a well or stream goes dry; or for water discharge problems that might arise. When the Resource Indemnity Trust (RIT) fund is capped, it is set up to take \$400,000 of those funds to be put into this new fund. The RIT fund comes from a tax on the energy companies, and is set up for this purpose. HB 572 takes this one step further and will ensure a remedy for many unforeseen problems that have to do with water. The Fiscal Note has an error and should read \$400,000. An amendment will be introduced to remedy that. Another amendment will deal with money that was appropriated for Conservation Districts. **REP. BALES** intended that Conservation Districts would be able to pay for their expenses directly from the fund.

Proponents' Testimony:

Gail Abercrombie, Montana Petroleum Association handed out 3 documents: "Flow of RIT Proceeds and Interest After the RIT reaches \$100 Million", **EXHIBIT(aph54a01)**; Coalbed Natural Gas in Southeast Montana", **EXHIBIT(aph54a02)**; and "MMS Minerals Revenue Management", **EXHIBIT(aph54a03)**. When the Resource Indemnity Trust (RIT) fund reaches 100,000,000, exhibit 1 indicates what the flow will look like if both **REP. BALES'** bill and **SENATOR**

**DEBBIE SHEA'S** bill pass. No monies are going into the fund any longer. When people talk about the Resource Indemnity Trust Fund, what we are talking about in this bill and **SENATOR SHEA'S** bill is about current taxes; not the fund. The fund goes to grants and long range planning. The amendment has been taken into account, and the \$400,000 is the correct amount on this page. The \$400,000 will be taken out of the monies that oil and gas tax pays into this fund and be put into a sub fund to pay these possible damages that may occur; an operator goes bankrupt, or is not there anymore. There is bonding, every operator has a landowner agreement. **Holly Franz** will talk about the ground water protection agreement where they have to replace wells within a certain distance of an operation. Those protections are in law currently. This fund is an insurance fund just in case something goes wrong and an operator is not there. Even if there are some damages that the \$400,000 didn't cover, the person can still apply for grants in the larger realm of the RIT. "Coalbed Natural Gas in Southeast Montana", exhibit 2, is a study done last fall on coal bed methane potential in Southeast Montana. It is based on 9,500 wells with a 20 year life span. Coalbed methane wells will be paying into the RIT fund. It is appropriate that this fund be set up, as this resource will pay into that fund too. Minerals Revenue Management, exhibit 3, is fiscal year 2000 mineral royalties paid to the state identified by the counties from which they were produced.

**Holly Franz, Redstone Gas Partners** said they are the primary company doing coalbed methane development in Montana. Currently there is a two year moratorium, but the pilot project for Redstone will continue during that time to allow the gathering of information for the Geological Impact Study (GIS) process. This proposed program is financed by the tax the methane companies will be paying; it is a way for the industry itself to pay for any bad actors that might occur. She handed out a description of the Powder River Basin Controlled Groundwater Area, that includes basically all the coal in eastern Montana, **EXHIBIT (aph54a04)**. It is a very protective order for the water in eastern Montana. With coalbed methane, they drill a domestic well and depressurize by withdrawing water, so water is the big issue. The purpose of a controlled groundwater area is to ensure that coalbed methane producers protect the water rights of the surrounding citizens. For example, if anyone has a well or a spring within ½ mile of a coalbed methane field, and it has diminished flows, it is the responsibility of the coalbed methane developer to make it right. They have to have mitigation agreements approved by the Board of Oil and Gas. The mitigation for Redstone specifically provides that as long as it is not a mechanical problem, such as a big pump, they will replace the well, no questions asked. There is a lot of protection available. Before they can drill, they must

have a full perimeter of non-maturing wells at least a mile outside of the field, and every four miles as you go around, so they will know what water pressures are before beginning, as well as after production starts. HB 572 would make sure the taxes the industry pays are responsible for remedying any problems.

**John Bloomquist, Montana Stockgrowers Association**, said the development of coalbed methane and the water related issues is of critical concern to the ranching community in that particular area because water is the most important resource available there. When the program was being put together, ranchers and stock growers looked at the controlled ground water area and its provisions and mitigation agreements. One concern is that the mitigation agreements will only be as good as the company and the developer that may be around, should something unanticipated occur. HB 572 is a safety net that would exist if there were problems or the developer was no longer around and something adverse happened to the water resource.

**John Allen, Western Environmental Trade Association** said this is important to many people who are concerned about what they do as far as developing this resource and taking care of unforeseen problems that might come up. Urges support of HB 572.

**William Duffield, Montana Association of Oil, Gas and Coal Counties** said this is a good insurance bill. It will aid in development of coalbed methane. Powder River County needs some development. Urges support.

**Patrick Montalban, Northern Montana Oil and Gas Association** said they are 70 members of independents located in Northern Montana. He said their philosophy as an industry has changed through the years, and they believe this is a good reason to use the RIT fund. This fund was set up for the indemnification of the extraction of natural resources from Montana and this is a good opportunity. The oil and gas business is coming back to Montana: 1) the price of the commodity has gone up considerably in the last six months, 2) two years ago, the Legislature improved the tax consequences in Montana, and we are now competitive with other producing states in this Northern Rocky Mountain area. They believe they can play an integral part in the economics of Montana and make the legislature's job a little easier in two years, as they will contribute a significant amount of dollars to the general fund. They believe the \$400,000 will not be used, because bonding requirements in Montana have been changed in the past two years by the Board of Oil and Gas. The people coming in to extract minerals from the state will have secure bonding and that will take care of any sort of problems with the environment. If that does not work, the RIT fund will be there.

**Bob Gilbert, Rosebud County** said they strongly support the bill and the use of the RIT fund. He said the written testimony he had requested was sent by E Mail and did not arrive.

**Opponents' Testimony:** None

**Informational Witnesses:** None

**Questions from Committee Members and Responses:**

**REP. JAYNE** asked how this bill fits in with **REP. BIXBY's** coal methane bill. **REP. BALES** said that bill just addressed the portion of the law that regulated whether or not the water from ground water could be discharged onto the surface. That bill was tabled in Natural Resources Committee. **REP. JAYNE** asked if the concerns in **REP. BIXBY'S** bill are the same in this bill. **REP. BALES** said HB 572 does not address any of the issues of depletion of water or discharge of water. Any water discharged to the surface must have a permit through the DEQ, in compliance with the clean water act of Montana.

**REP. MCCANN** asked for clarification that the gas company would try to make amends in the event there was an impact on his water source, with the exception they would not pay for a pump. **Holly Franz, Redstone Properties** said that is correct. **REP. MCCANN** asked what would happen if a rancher had a well down at 40 feet and there were problems that need to be mitigated. The gas company agrees to drill another well. Isn't it reasonable as well, that they would pay for a pump that would be at a greater depth? **Holly Franz** said their duty, under the law, is to promptly replace that water source. If the existing pump did not have the necessary horsepower, i.e. from 40 to 200 feet, that could probably be included. What has happened is that someone will say their well is not working, and it is only a bad pump. There was nothing wrong with the availability of water. Previous testimony was related to the reason they can't get the water isn't because water levels have dropped; it is because there is something wrong with the pump itself. If there is something wrong with existing equipment, that remains the responsibility of the well owner. Anything related to drilling or coalbed methane production, they would have a duty to make right. **REP. MCCANN** asked where that information is located in this bill. **Holly Franz** said it is not in this bill. The DNRC adopted a groundwater controlled area for the eastern Montana coal region specifying mitigation agreements, monitoring, and prompt replacement. The Board of Oil and Gas has to approve the actual mitigation agreement that the company brings to its neighbors before it can get a permit and go forward with production. Coalbed methane is like a lot of other activities; the Clean Water Act, the Clean Air Act, the Water Use

Act, etc. Its not all in this bill, it is existing law put into place by DNRC. **REP. MCCANN** asked if the language is in the rules of the DNRC. **Holly Franz** said it is within an order that was issued by DNRC specifically for coalbed methane.

**REP. MCCANN** then asked **REP. BALES** to clarify where the language is found. **REP. BALES** said that information is correct; a controlled ground water area is set up by DNRC. HB 573 states that any future permitting would have to be in a controlled ground water area; so that bill would require that DNRC set up a controlled ground water area around any coalbed methane development. **REP. MCCANN** gave another scenario to clarify his question. If he has a spring with a flow, then a company comes in and develops a gas well and suddenly his spring loses its flow below five gallons/minute. This won't sustain your livestock, so you have an impact. You are looking at a possible well, with no electricity available. Are you comfortable that there is enough existing DNRC language, whatever vehicle that is in, to address this situation? **REP. BALES** said the tools are there. It goes back to the regulations that were put in with the controlled ground water area, because they have to monitor the draw-down of those veins, etc. If they notice a draw-down, they have to go out to an ever increasing circle. In what you have described, there is a possibility they would put a in a pipeline to furnish water, rather than trying to have a generator. Each individual circumstance would be different, no one knows for sure what would happen. The system is designed to hold the development company responsible for keeping the water supply to the landowner. How they decide to do that is between them and the landowner.

**REP. MCCANN** asked for clarification that there is language in department law to recognize continuous flows of water, so the landowner inadvertently is not left bearing the expense of development in the scenarios we have talked about. **Holly Franz** said the specific language in department law is that the developer must promptly supplement or replace the water with a useable water source. Since most of the coal beds are from 300-900 feet down, it is hoped there won't be a direct impact on a surface water spring; but the controlled ground water area order puts that responsibility squarely on the developer.

**REP. KAUFMANN** asked about the apparent reduction in the orphan share account in the fiscal note. Will that take money away from potential orphan share projects? **Ann Danzer, Centralized Services Division Administrator for Department of Environmental Quality** said that it would. **REP. KAUFMANN** asked for an explanation of what orphan share is. **Ann Danzer** said it was created by the 1995 Legislature. For example, if there is a reclamation project that may have had four owners over time, and

a cost is incurred, but they can only find three responsible parties; the fourth one, either because they died and left no heirs, etc. is the orphan share. The purpose of orphan share is to pay for that portion where they cannot find the responsible party. **REP. KAUFMANN** asked if all revenue that will flow into this new account is new revenue that wouldn't be available if there were no methane gas development? **Ann Danzer** said she has not seen revenue estimates that show additional revenues going into the account as a result of this coalbed methane. They have based revenue estimates on what has been happening in the past.

**REP. KAUFMANN** asked about testimony that said it is not likely this will have to be used, because you have bonding agreements in place. Does the account continue to grow at \$400,000 per year, or does it stop there until it is used? **REP. BALES** said the account appropriation is for ten years. **REP. KAUFMANN** said if the issue is water quality instead of water quantity, if the discharge is saline and can't be used, how would a company make that right? **REP. BALES** said the discharge will have to meet certain criteria. If they did get a permit, if they did meet it, but there was some unexpected consequence, this fund could be used. It needs to be available in case those problems arise. In some areas, there are large reservoir impoundments they have used to stock fish in, for bird habitat, etc. No one fully understands if there may be long term impacts. If there are, the methane companies probably will be held liable. If they are not there, this is something else to fall back on. To address the question of the orphan share, it doesn't kick in until after the RIT fund is capped, and will come out of the amount that was going into the RIT fund. It will not affect the revenues paying to the orphan share. **REP. KAUFMANN** asked, if you have this agreement up front, the company is responsible, and you have a bond, why do you need the account? Can't you just use the bond? **REP. BALES** said possibly, but there may be long term impacts. The company did everything properly, satisfied all the requirements of the bond, and got all the bond money back and then something is discovered 10 years later. That is the purpose of the account.

**REP. LEWIS** said there are several bills around, and Department of Environmental Quality (DEQ) wants some money for cash flow. Is there any money left for orphan share; how does all this work? **John Tubbs, Department of Natural Resources & Conservation (DNRC)** said there are three bills impacting deposits to the orphan share account. **SEN. BECK's** bill will create a hard rock mining bond program. He has taken the 8 ½% allocation of the metalliferous mine tax as the revenue source to sell those bonds. They would be general obligation bonds that could go 10-20 years. Current allocation of the metal mines tax to the orphan share account is \$680,000 a year. His bill essentially takes that entire revenue

away from orphan share. **SEN. SHEA'S** Bill, SB 322 takes a resource indemnity ground water assessment tax. It takes \$300,000/year for a scholarship program, and retraining programs for unemployed mining and timber industry people. **REP. BALES'** bill would receive \$400,000. Total impact if everything passed would be a loss of \$680,000 for metal mines tax, \$150,000 for **SEN. SHEA'S** bill, and \$200,000 for **REP. BALES'** bill. There would be a significant reduction of \$1,000,000 over what current law is. They would still receive \$1,000,000 in a combination of RIGWA taxes and oil and gas taxes. **REP. BALES'** bill is significant in that if coalbed methane development takes off, it generates its own RIGWA tax.

**REP. KASTEN** asked what the projection is toward receiving funds from coalbed methane. **John Tubbs** said there is a current court ordered moratorium until the Environmental Impact Study (EIS) is concluded. It may be done in September 2001; the final EIS would be out in spring 2002. If permits are requested, development could take place in summer of 2002. Currently, there are 120 wells producing coalbed methane. **REP. KASTEN** asked if there is any way to speed up that time line. **John Tubbs** said another bill might do that. He deferred to **REP. BALES** who said no, not at this time. His other bill would have allowed some development if there was possible drainage, and the effective date was amended to be after the proposed completion of the EIS. Permits have been issued and Redstone can go ahead and develop a few more wells. Under the agreement, there is the ability to drill 150 test wells, but they cannot produce any gas and they cannot discharge any water.

**REP. KASTEN** asked how we could fund this? **REP. LEWIS** said we are working on the 2003 budget now. We need to look at SB 322. Between these two bills, we have to do some surgery. We are taking too much money out if we go with both of those bills; one at \$300,000, the other at \$400,000 a year, and **SENATOR BECK'S** bill. **John Tubbs** said the current fiscal note has a doubling up and amendments are in order. Amendments were already passed in the Senate on **SENATOR SHEA'S** bill. Also, there is a bump off in RIGWA collections for Orphan Share and Reclamation Development Grants because we have reached the \$100,000,000 amount in the trust. This increase offsets the allocations away from orphan share. In combination, they may be losing some dollars; not just what was promised to them, but in actual dollars. He would like to work with **REP. LEWIS** on a strategy to mitigate the impacted orphan share. **REP. LEWIS** said the committee needs options to look at. The committee can't do everything that is presented.

**REP. JAYNE** asked why there was litigation on this; it appears that nothing can be done until an EIS is completed. What



prompted the whole process? **Holly Franz** said the Board of Oil and Gas did a programmatic EIS to control how they permit oil and gas wells. When Redstone filed its first permit applications with the Board, they relied on that general programmatic EIS for the permitting of coalbed methane wells. The Board was then sued by the Northern Plains Resource Council because the Council felt that coalbed methane was sufficiently different from normal oil and gas production, and should have its own independent environmental review process. As a result of that lawsuit, the Board and Northern Plains entered into a stipulation which provided for a programmatic EIS on coalbed methane. It also allowed the Redstone Pilot Project to go forward, because in order to have some information in the EIS, they needed some drilling to go on, and they needed to know the characteristics of the coal. **REP. JAYNE** asked where the language is codified about supplementing or replacing water? **Holly Franz** said that the Water Use Act in Chapter 5 of Title 85 provides for DNRC to establish controlled ground water areas. It sets forth the circumstances, and what can be involved. Operating under that authority, DNRC proposed a controlled ground water area. They held public hearings around eastern Montana, took public input, and issued their final order on 12/15/99. The specific language referred to in her conversation with **REP. MCCANN** is from DNRC's final order and is allowed under Title 85. **REP. JAYNE** asked if there are rules and regulations that implement the final order of this Powder River Controlled Ground Water Area. **Holly Franz** said that final order is the rules and regulations. There is another statute, 85-2-510 which says if you have a controlled ground water area, all the permitting of oil and gas wells within that area is handled by the Board of Oil and Gas. The Board has also adopted certain rules and regulations, particularly Board order 99-99, that states exactly how they will go forward with permitting of these gas wells.

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**REP. KAUFMANN** asked if the Reclamation Development Grant is also going to suffer a hit based on this bill. **John Tubbs** said it is; in equal amounts to the orphan share. It won't impact the grant, because they are appropriating a set amount in HB 7, \$4.1 million and there is revenue to support that. In the future, it represents a grant per biennium that loses during the period the bill is funded. **REP. KAUFMANN** said if methane development takes off, and because the RIT is now capped, shouldn't there be additional monies? **John Tubbs** said that is why **REP. BALES** is here. **REP. KAUFMANN** asked if it would happen in the first year that we divert the \$400,000, since we probably haven't received that much tax from production. **John Tubbs** said the most important of **REP. BALES'** assumptions is \$1.83 per thousand cubic

feet of gas produced. That is less than half of what the current price is. In the out years, coalbed methane folks will be paying in more than their share. **REP. KAUFMANN** said if everything goes right, there really aren't impacts, if the responsible companies do the right thing, then what happens to that money. **John Tubbs** said at the end of the period, when they are about to implement this, there are certain committees that look at fund balances closely for opportunities to use these monies in other places.

**REP. FISHER** said in the Coalbed Natural Gas in Southeast Montana handout, (exhibit 2) the revenues are supposed to come in at \$441.84 Million in 20 years. Why are three counties entitled to \$165 Million? **REP. BALES** deferred to **Gail Abercrombie**, as it was her handout. **Gail Abercrombie, Montana Petroleum Association** said, in the statutes addressing oil and gas production taxes, each have a distribution of the tax that is paid. The 86% goes to counties and schools. It replaces what would otherwise have been an ad valorem tax, because we don't have that tax, per se. This replaces a property tax. The counties use it for their general fund and for school funding. Currently, most of the 86% goes back to the counties of origin. It is a production tax that operators pay.

**REP. FISHER** asked how that would affect the 8.36% they were looking for today, since those three counties were involved in that? **REP. LEWIS** said they were looking for more money for coal impacts; this one is for methane impacts. **REP. FISHER** asked if they had this much coming in, why do they need the 8.36% off the coal bed? **REP. LEWIS** deferred to the bill's sponsor. **REP. LINDEEN** said there was a time when 17% went to the coal board in order to give grants out to communities. It is now down to 4%. With coal grant monies, they don't get the whole 8.36%; they only get about 4% of that money. The impacts to those communities have been over coal development. If there are further impacts due to coalbed methane development, there should be money to take care of those impacts as well. **REP. FISHER** said his understanding of the impact fee was to help the counties with their roads and infrastructures and schools. They have enjoyed that for 25 years. He wants to find out how they have a draw on this \$165 million? **REP. LINDEEN** said this is just a projection.

**CHAIRMAN VICK** asked **REP. BALES** to respond to the question.

**REP. BALES** said it was pointed out that the \$165 million in the projected tax that will be paid in over a 20 year period will go back to the county. Taxes were redone a few years ago; oil and gas properties don't have a big property tax on them, like the coal properties do. This tax is the main tax money going back to

the counties due to oil and gas development. It won't be up front, and will be over a protracted period of time.

**REP. LINDEEN** referred to the Coalbed Methane Gas Development handout (exhibit 4), concerning water mitigation agreements where the developers would take care of any water wells and natural springs that went bad within  $\frac{1}{2}$  mile of a coalbed methane gas field. "Is there some historical data where we feel that  $\frac{1}{2}$  mile is enough? Why not one or two miles?", he asked. **REP. BALES** said, that is **Holly Franz's** handout. There is also a requirement on the methane producing company to set up a monitoring system which will be approved by a task force. The monitoring system will tell whether or not there are draw downs or other things happening and let them know whether  $\frac{1}{2}$  mile is enough. There are provisions to expand it if necessary. **Holly Franz** said the  $\frac{1}{2}$  mile originally came because when DNRC permits groundwater wells for notice purposes, they know from experience that is the area most likely to be adversely affected. The way the controlled groundwater works, if you have a well  $\frac{1}{2}$  mile out, and it is impacted, it requires the coalbed methane developer to go out another  $\frac{1}{2}$  mile from there and have mitigation agreements with those folks, because now they have seen  $\frac{1}{2}$  mile is not enough. It is a leap frog approach; if you have impacts at the  $\frac{1}{2}$  mile, you go out further, etc. **REP. LINDEEN** asked if there is any point at which they discontinue going out  $\frac{1}{2}$  mile. **Holly Franz** said, the way the order is written, probably most groundwater impacts are localized, and it is just the close wells that bear the risk.

**REP. LINDEEN** said the total amount of compensation made to a landowner or water right holder was capped at \$50,000: New Section 5, Page 4, Lines 15-17. How did you come up with the \$50,000 amount; would that be adequate to re-drill or replace water? **REP. BALES** said that was an arbitrary figure. Nothing can be taken out for five years. After that, there can be grants for water depletion, if a well or spring goes dry; if they cannot find the responsible party, or whatever. \$50,000 would be sufficient for that. After the ten year period, if you have possible water damage or discharge problems, \$50,000 may not be enough. As we get experience, it could be amended to take that into account.

**REP. HAINES** asked about the last two paragraphs in the DNRC provisions (exhibit 4), the  $\frac{1}{2}$  mile notice and the requirement that a developer characterize the hydrologic conditions in the coal beds prior to development. Are those requirements in state statute or agency regulations? **Holly Franz** said those are all in the controlled groundwater order by DNRC. The order created a technical advisory commission made up of hydrologists, people from DNRC, and the Montana Bureau of Mines and Geology. They are

the ones with the authority. **REP. HAINES** asked where the authority comes from for DNRC to issue this requirement. **Holly Franz** said statutes on controlled ground water areas are in Title 85, Chapter 2, Part 5.

**CHAIRMAN VICK** said the summary of how these bills will affect the RIT and how they can tie those all together will be needed soon, as the deadline for Executive Action is approaching.

**Closing by Sponsor:**

**REP. BALES** said the amendments are written up and were ready to present on second reading. He will find them. He thanks the committee for a very insightful hearing. This is an important fund that dovetails in with what the tax was originally designed for. It is just a further extension to protect the land, the environment and our resources. This fund is necessary and it should be given top priority, to take this money after the current fund is capped, and put it into the new fund for any unforeseen problems. **REP. BALES** also asked due consideration for his other bill. HB 226 will provide an impact fund to the counties, some of which are very poor counties at this time.

**EXECUTIVE ACTION ON HB 177**

**REP. LINDEEN** said she would like to wait until the beginning of next week so they can meet with the Governor once more before doing Executive Action on HB 177.

**EXECUTIVE ACTION ON HB 614**

**REP. MCCANN** said he would like to table HB 614. It was a committee bill to deal with some irregularities between the Department of Labor and Department of Administration on the bidding process. A committee bill was going to be created if it was necessary. The problem was resolved, therefore he would like to table HB 614. **CHAIRMAN VICK** said the rules are that if the sponsor of a bill agrees to table his bill, it does not have to have a hearing. Since **REP. MCCANN** is the sponsor, we are allowed to table the bill.

**Motion/Vote:** **REP. MCCANN** moved that **HB 614 BE TABLED. Motion passed unanimously.**

**EXECUTIVE ACTION ON HB 485**

**REP. LINDEEN** would like to table HB 485 since we are in a serious budget crisis. She would hope that when they come back in two years they will hear this bill again.

**Motion/Vote:** REP. LINDEEN moved that HB 485 BE TABLED. Motion carried unanimously.

**EXECUTIVE ACTION ON HB 598**

**Motion:** REP. BRUEGGEMAN moved that HB 598 BE CONCURRED IN.

**Discussion:**

REP. KAUFMANN explained her amendment, HB059801.agp, **EXHIBIT (aph54a05)**. This bill says government agencies will be accountable for our money. The amendment says that private agencies will be accountable also. This would be for grants, and subsidies that go to specific private industries; i.e. economic development money, business recruitment money, etc. The bulk of these amendments set up a process by which any government entity that grants public money to a private company for economic development will enter into a subsidy agreement with that grantor about what kind of public benefit will come from that money. The two requirements are that you have to talk about the number of jobs you will create and you have to say what the wages of those jobs are. It will be up to the public to apply some political pressure if they don't agree with whoever made this grant. This is a mechanism for public disclosure and accountability.

REP. MCCANN asked for an explanation of the public evaluation process. REP. KAUFMANN said it is a reporting requirement. There is a threshold level where, if the grant exceeds \$25,000, they have to do a report. The report would be in a public place where anyone who wanted to could come and see it. If the grant is large, over \$200,000, a public meeting would be required.

REP. BRUEGGEMAN said he would resist this amendment. There are a lot of issues, and it was tabled in Business and Labor. He doesn't want to add this liability to his bill and try to lump another bill into it.

REP. PETERSON asked who would pay for the report, and what is the criteria. REP. KAUFMANN said the criteria is whatever the grantor and the grantee agree upon. It is flexible, but you must talk about the number of jobs you intend to create and the wages of those jobs. The company would have to have meetings, and there is a cost for people's time to work out the details. The report would be done by the Department of Commerce; that is where the fiscal note said there would be an impact of \$50,000. REP. PETERSON asked if this would also be applied to a federal grant, such as the provision we have for funding a health education program. REP. KAUFMANN said federal grants are specifically exempted from the bill.

**REP. MCCANN** said it is difficult to deal with numerous amendments. The public evaluation process does not appeal to him because that is the legislature's job. The programs deserve the scrutiny that **REP. KAUFMANN** is talking about. The amendments give the bill more balance and he would like to see them added either in committee or on the floor. We are asking for accountability both ways, with the exception of the public evaluation because it is not productive.

**REP. BRUEGGEMAN** said he would not disagree. These are one in nature, but two separate issues. He does not want someone to amend their bill into his. The fact that we do need to audit a lot of these things does have merit. He asked that it be kept out of his bill.

**REP. BUZZAS** said she supports the amendment. We will be requiring audits for state agencies, we should be requiring the same review for private agencies, she said.

**REP. JAYNE** said the amendment might be impacted if state money is going to private agencies and asked for more information. **REP. BRUEGGEMAN** said his bill deals with every program that is within the agencies in state government. It does not deal with any of the private public partnerships. There is nothing dealing with money going to the private sector.

**CHAIRMAN VICK** said the state wastes a lot of money on business subsidies that do little. If you could find some of those subsidy programs and add an amendment to this list of programs to audit, you might find more support.

**REP. BRUEGGEMAN** said he agrees and if anyone wanted to add to the list of audits, he would support that. Maybe we can compile a list that could be added on the floor or in the Senate, he said.

**REP. KAUFMANN** said there may be merit in that. If this amendment fails today, she will not offer it on the floor; it is too complex. She would work with some Senators who find it of interest and will consider the idea of identifying specific grant programs that could be audited. There are two other parts to this set of amendments. She asked for a vote on this first concept, and said she would then withdraw one of the others and talk about the third. She asked if she could segregate her own amendments.

**CHAIRMAN VICK** said that would be okay, then they would vote, and **REP. LEWIS** would take over from there, as he had to leave.

**REP. KAUFMANN** said she did as much as she could to explain it and realizes it is complex for the short time they have available. If unsuccessful, she will try to find a Senator who likes the idea.

**REP. MCCANN** asked if the public evaluation process could be taken out. **REP. KAUFMANN** said she would agree to that.

**Motion/Vote:** **REP. KAUFMANN** moved that **SEGREGATED AMENDMENT TO HB 598 DO PASS**. Motion failed 9-9 with Buzzas, Callahan, Jayne, Kaufmann, Lindeen, McCann, Pattison, Peterson and Tropila voting aye.

**REP. MCCANN** said he had an important question to ask on the bill, not the amendment, and then had to leave. Permission was given. He said on Page 4, New Section 4, it says: "The following agency programs terminate 7/1/2003 unless re-authorized by the legislature". Is it appropriate to extend that to 2005 when the legislature would meet? That way you are not terminating the programs, taking them out in preparation of the budget, then putting them back in if they are agreed upon in review. **REP. LEWIS** said they would be in as current level programs, because they exist until July 1. That is the next biennium, so you would have to put them in as new programs when you have a sunset bill.

**Legislative Staffer Taryn Purdy** said you would have to close them as a proposal going to the legislature for continuance.

**Jane Hamman, Office of Budget and Program Planning**, said there would be no base budget, no present law budget for any of these programs, the way the bill is currently written. They would not be included in the balance sheet in the governor's budget as it got presented to the next session, because it is a requirement to prepare the budget based on current law, and as drafted it says they sunset July 1. **REP. MCCANN** was right, if they were to be in the budget for legislative consideration for deletion, it would have to be amended to say 2005 or something else.

**REP. LEWIS** said, if you leave it like it is now, and the Governor wants to keep that program, it would be presented as a new program in the 2003 budget. This is something you might be interested in doing.

**REP. BRUEGGEMAN** said the idea is to give every program a new level of exposure and make sure there is more oversight. It doubles the inspection because they have to be audited, then they have to go before a committee. Next, a bill must be drafted based on the audit committee's recommendation. They will decide whether to retain its current form, modify it, or terminate it.

It will have to be re-authorized by the next legislature. One of the new proposals will be extending the sunset eight years.

**REP. MCCANN** said he understands the intent, but is looking at the process and wondering if we still don't have the intent of the bill with the change of the date. He will not oppose the bill, these programs do warrant being reviewed. Possibly the process is getting skewed, he said.

**REP. KASTEN** said if **REP. KAUFMANN** would come up with a conceptual amendment to take care of programs that are identified, he would support the bill.

**REP. MCCANN** said this bill died in the Senate last time. We might all be on board, but politically, what will happen down the road?

*{Tape : 2; Side : A}*

**REP. KAUFMANN** said she will withdraw the part of the amendment that put any funds that were gained by elimination of programs into education. The amendment she is retaining adds one more thing to the list of audited programs. There was nothing for the Department of Corrections. She would add Contract Beds Program for private prisons as one of the audited programs; numbers 1 and 14.

**REP. BRUEGGEMAN** asked **REP. FISHER** if he feels the program should be audited. **REP. FISHER** said we look at it when we look at their budget, so running an audit on them is okay. **REP. BRUEGGEMAN** said he would concur and couldn't turn down an audit.

**REP. CLARK** asked if there are enough auditors to get all these finished. **REP. BRUEGGEMAN** said there is one auditor, but the 70 programs are scheduled over the next eight years. Section 4 divides it into four sections, so there are not 80 programs. It says that the audit will require three auditors. The legislative auditor said two auditors can cover most of the responsibility, and they will need to hire an auditor to cover the eight years.

**REP. CALLAHAN** asked when the audit would be done. **Legislative Staffer Taryn Purdy** said contract beds would be required in the next biennium.

**REP. FISHER** said contract beds are spread out in different prisons; if you audit one, you should audit them all. **REP. LEWIS** said the regional prisons are part of the contract bed program, so they would all be audited. **REP. TROPILA** stated that contracted beds have overspent their budget by \$4.2 million.



**REP. BRUEGGEMAN** said the amendment places this in Section 60. Can this be lumped into Section 4 under the normal list of programs to be audited? **Legislative Staffer Taryn Purdy** said it was done that way because contract beds is really a program. It is one of the things they contract for, and it is not a program that can be terminated. The amendment requires those contract beds to be audited within the next year; but they can't be terminates. **REP. LEWIS** said it is not an organization; it is an activity.

**REP. BRUEGGEMAN** asked whether it is necessary to amend this into the bill or simply request a performance audit? The reason would be because you can't terminate this program; the rest of the programs are scheduled to be terminated. With this, we can't terminate it, so it would be a typical performance audit. Would defer to **REP. KAUFMANN**. **REP. KAUFMANN** said it is her preference to put it in to make sure it happens. **REP. BUZZAS** said by putting it in a bill, it says that the auditor "shall" perform this audit. The normal way of doing things is to simply request the auditor to do it. The distinction is that it adds another layer.

**REP. FISHER** said contract beds are beds and cells, and things the Corrections Department contracts with private people to do. Missoula, Glendive, Shelby all have contract beds. All you are doing is going to someone and renting a room to put a prisoner in. It would difficult to audit the program; you can always question the concept, but the Corrections Department has to have some place to put these people when they run out of space in our state owned institutions.

**REP. LEWIS** said if you want a performance audit of that activity, what you would end up with is an evaluation of the difference in price between building a new facility for \$20 million and staffing it, versus buying beds from someone else. That is the issue. Just looking at the options is what a normal performance audit would do. Unless you come up with an alternative, you can't just quit doing contract beds.

**REP. KAUFMANN** said they also might look at community based programs that would reduce the population. There is a variety of things the audit can look at.

**REP. JAYNE** asked for clarification of the issue. **REP. LEWIS** said we are discussing the amendment to **REP. BRUEGGEMAN's** bill, which will add the performance audit of contract beds.

**REP. BRUEGGEMAN** asked the sponsor of the amendment if it is her intent that we review this every eight years, along with the regular schedule of rolling sunsets. **REP. KAUFMANN** said it is.

**REP. BRUEGGEMAN** said he may make a substitute motion to make a new section that would be section 6, where we could make a provision to add performance audits that can't be defined as program audits. **REP. BRUEGGEMAN** then paused and said he would support the amendment as it is.

**REP. KAUFMANN** said she had no more comments about the remaining segregated amendment, since she had **REP. BRUEGGEMAN's** approval.

**Motion/Vote:** **REP. KAUFMANN** moved that **SEGREGATED AMENDMENT TO HB 598 DO PASS. Motion carried unanimously.**

**REP. LEWIS** noted that the committee is back to the bill as amended.

**REP. BUZZAS** said she would like to add another program to the list for audit. That would be the Youth Challenge Program. Information on the cost of that program shows it is now coming out of the general fund budget; last time it was out of special revenue. This warrants our attention and should be added.

**REP. FISHER** said the Youth Challenge Program is in the budget as a one time item and is done at the end of one year. At that time, you could challenge reinstating it. Would resist this motion.

**REP. BUZZAS** said it was supposed to be one time only the last time. Since this issue was brought up, she has gotten more information on this program. There are some important things going on in this program that we need to look at. Would discuss it later.

**Legislative Staffer Taryn Purdy** clarified the previous information with **REP. BUZZAS**. She asked if that would be added to the amendment that was just added; in other words, would it be a requirement for the auditor to audit that in this section, but not terminate the program. **REP. BUZZAS** said yes.

**REP. LEWIS** said we are on the substitute motion of **REP. BUZZAS** to add a performance audit to the Youth Challenge Program which is a one time only appropriation for this biennium.

**Substitute Motion/Vote:** **REP. BUZZAS** made a substitute motion that **SUBSTITUTE AMENDMENT TO HB 598 DO PASS. Substitute motion failed 5-13 with Buzzas, Callahan, Jayne, Kaufmann, and Lindeen voting aye.**

**REP. LEWIS** directed the committee back to the bill, as the substitute motion failed.

**REP. JAYNE** referred to Page 3, Lines 5-9; specifically Line 7 where it says "the state shall provide and conduct only those services that represent appropriate government services". Who decides what is appropriate government services? **REP. BRUEGGEMAN** said the legislature deems what is appropriate government service. We are the ones making the policy. **REP. JAYNE** asked at what point the legislature would decide to implement this bill to decide what is appropriate government services. **REP. BRUEGGEMAN** said that would be taken care of in the audit committee. They will have a comprehensive audit of the program in front of them when the programs are reviewed every two years. At that time, they will determine whether or not this would be appropriate government service in the legislature's mind. **REP. LEWIS** added that would come back in the form of a bill to re-authorize or not re-authorize the program. The final decision would be the legislature, based on the audit. **REP. BRUEGGEMAN** said we are implementing a new process; we will have one bill every two years to deal with this. It will be the audit bill and will deal with these things on a continual basis. It is an important process.

**REP. LINDEEN** said she wasn't going to vote for the bill, but for the most part, other than putting more work load on the legislative audit division, it is harmless. Will support HB 598.

**REP. BUZZAS** said she will vote against this bill because we can ask for audits now. We can take a list down and ask for audits and get them. We don't need this bill. The second reason is because it adds an FTE (full time employee). Basically what the bill does is to grow state government in order to control growth in state government. That doesn't make sense.

**REP. JAYNE** asked for the total monetary amount we are looking at in all the programs. **REP. BRUEGGEMAN** said he did not know. **REP. LEWIS** said it is fairly substantial; hundreds of millions.

**Motion/Vote:** **REP. BRUEGGEMAN** moved that **HB 598 AS AMENDED DO PASS AS AMENDED**. Motion carried 15-3 with Buzzas, Jayne, and Kaufmann voting no.

**ADJOURNMENT**

Adjournment: 5:30 P.M.

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REP. STEVE VICK, Chairman

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LINDA KEIM, Secretary

SV/PB

**EXHIBIT (aph54aad)**